

AMENDED IN SENATE JULY 1, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 186**

**Introduced by Assembly Member Correa**

January 27, 2003

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An act to amend Sections 4059, 4060, and 4061 of the Business and Professions Code, *and to amend Sections 11250 and 11251 of the Health and Safety Code*, relating to optometrists.

LEGISLATIVE COUNSEL'S DIGEST

AB 186, as amended, Correa. Optometrists: dangerous drugs and devices.

Existing law, the Pharmacy Law, authorizes a manufacturer, wholesaler, or pharmacy to furnish a dangerous drug or dangerous device to a physician, dentist, podiatrist, and veterinarian without a prescription when accompanied by sale and purchase records. Existing law also permits these persons to possess a controlled substance when in properly labeled stocked containers, and also authorizes the distribution of a dangerous drug or device as a complimentary sample only upon the written request of these persons. *Existing law, the California Uniform Controlled Substances Act, authorizes the sale by designated persons of a controlled substance without a prescription to specified healing arts practitioners.*

This bill would include optometrists in these provisions.

Existing law authorizes a pharmacist to furnish topical pharmaceutical agents to an optometrist.

The bill would instead authorize a pharmacist to furnish therapeutic pharmaceutical agents to an optometrist.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 4059 of the Business and Professions  
2 Code is amended to read:

3 4059. (a) A person may not furnish any dangerous drug,  
4 except upon the prescription of a physician, dentist, podiatrist,  
5 optometrist, or veterinarian. A person may not furnish any  
6 dangerous device, except upon the prescription of a physician,  
7 dentist, podiatrist, optometrist, or veterinarian.

8 (b) This section does not apply to the furnishing of any  
9 dangerous drug or dangerous device by a manufacturer,  
10 wholesaler, or pharmacy to each other or to a physician, dentist,  
11 podiatrist, optometrist, or veterinarian, or to a laboratory under  
12 sales and purchase records that correctly give the date, the names  
13 and addresses of the supplier and the buyer, the drug or device, and  
14 its quantity. This section does not apply to the furnishing of any  
15 dangerous device by a manufacturer, wholesaler, or pharmacy to  
16 a physical therapist acting within the scope of his or her license  
17 under sales and purchase records that correctly provide the date the  
18 device is provided, the names and addresses of the supplier and the  
19 buyer, a description of the device, and the quantity supplied.

20 (c) A pharmacist, or a person exempted pursuant to Section  
21 4054, may distribute dangerous drugs and dangerous devices  
22 directly to dialysis patients pursuant to regulations adopted by the  
23 board. The board shall adopt any regulations as are necessary to  
24 ensure the safe distribution of these drugs and devices to dialysis  
25 patients without interruption thereof. A person who violates a  
26 regulation adopted pursuant to this subdivision shall be liable upon  
27 order of the board to surrender his or her personal license. These  
28 penalties shall be in addition to penalties that may be imposed  
29 pursuant to Section 4301. If the board finds any dialysis drugs or  
30 devices distributed pursuant to this subdivision to be ineffective or  
31 unsafe for the intended use, the board may institute immediate  
32 recall of any or all of the drugs or devices distributed to individual  
33 patients.

34 (d) Home dialysis patients who receive any drugs or devices  
35 pursuant to subdivision (c) shall have completed a full course of



1 home training given by a dialysis center licensed by the State  
2 Department of Health Services. The physician prescribing the  
3 dialysis products shall submit proof satisfactory to the  
4 manufacturer or wholesaler that the patient has completed the  
5 program.

6 (e) A pharmacist may furnish a dangerous drug authorized for  
7 use pursuant to Section 2620.3 to a physical therapist ~~or may~~  
8 ~~furnish therapeutic pharmaceutical agents authorized for use~~  
9 ~~pursuant to subdivision (c) of Section 3041 to an optometrist.~~ A  
10 record containing the date, name and address of the buyer, and  
11 name and quantity of the drug shall be maintained. This  
12 subdivision shall not be construed to authorize the furnishing of a  
13 controlled substance.

14 (f) A pharmacist may furnish electroneuromyographic needle  
15 electrodes or hypodermic needles used for the purpose of placing  
16 wire electrodes for kinesiological electromyographic testing to  
17 physical therapists who are certified by the Physical Therapy  
18 Examining Committee of California to perform tissue penetration  
19 in accordance with Section 2620.5.

20 (g) Nothing in this section shall be construed as permitting a  
21 licensed physical therapist to dispense or furnish a dangerous  
22 device without a prescription of a physician, dentist, podiatrist,  
23 optometrist, or veterinarian.

24 (h) A veterinary food-animal drug retailer shall dispense,  
25 furnish, transfer, or sell veterinary food-animal drugs only to  
26 another veterinary food-animal drug retailer, a pharmacy, a  
27 veterinarian, or to a veterinarian's client pursuant to a prescription  
28 from the veterinarian for food-producing animals.

29 ~~(i) This section shall become operative on July 1, 2001.~~

30 SEC. 2. Section 4060 of the Business and Professions Code  
31 is amended to read:

32 4060. No person shall possess any controlled substance,  
33 except that furnished to a person upon the prescription of a  
34 physician, dentist, podiatrist, optometrist, or veterinarian, or  
35 furnished pursuant to a drug order issued by a certified  
36 nurse-midwife pursuant to Section 2746.51, a nurse practitioner  
37 pursuant to Section 2836.1, or a physician assistant pursuant to  
38 Section 3502.1. This section shall not apply to the possession of  
39 any controlled substance by a manufacturer, wholesaler,  
40 pharmacy, physician, podiatrist, dentist, optometrist, veterinarian,

1 certified nurse-midwife, nurse practitioner, or physician assistant,  
2 when in stock in containers correctly labeled with the name and  
3 address of the supplier or producer.

4 Nothing in this section authorizes a certified nurse-midwife, a  
5 nurse practitioner, or a physician assistant to order his or her own  
6 stock of dangerous drugs and devices.

7 SEC. 3. Section 4061 of the Business and Professions Code  
8 is amended to read:

9 4061. (a) No manufacturer's sales representative shall  
10 distribute any dangerous drug or dangerous device as a  
11 complimentary sample without the written request of a physician,  
12 dentist, podiatrist, optometrist, or veterinarian. However, a  
13 certified nurse-midwife who functions pursuant to a standardized  
14 procedure or protocol described in Section 2746.51, a nurse  
15 practitioner who functions pursuant to a standardized procedure  
16 described in Section 2836.1, or protocol, or a physician assistant  
17 who functions pursuant to a protocol described in Section 3502.1,  
18 may sign for the request and receipt of complimentary samples of  
19 a dangerous drug or dangerous device that has been identified in  
20 the standardized procedure, protocol, or practice agreement.  
21 Standardized procedures, protocols, and practice agreements shall  
22 include specific approval by a physician. A review process,  
23 consistent with the requirements of Section 2725 or 3502.1, of the  
24 complimentary samples requested and received by a nurse  
25 practitioner, certified nurse-midwife, or physician assistant shall  
26 be defined within the standardized procedure, protocol, or practice  
27 agreement.

28 (b) Each written request shall contain the names and addresses  
29 of the supplier and the requester, the name and quantity of the  
30 specific dangerous drug desired, the name of the certified  
31 nurse-midwife, nurse practitioner, or physician assistant, if  
32 applicable, receiving the samples pursuant to this section, the date  
33 of receipt, and the name and quantity of the dangerous drugs or  
34 dangerous devices provided. These records shall be preserved by  
35 the supplier with the records required by Section 4059.

36 (c) Nothing in this section is intended to expand the scope of  
37 practice of a certified nurse-midwife, nurse practitioner, or  
38 physician assistant.

39 SEC. 4. Section 11250 of the Health and Safety Code is  
40 amended to read:

1 11250. (a) No prescription is required in case of the sale of  
2 controlled substances at retail in pharmacies by pharmacists to any  
3 of the following:

4 ~~(a)–~~

5 (1) Physicians.

6 ~~(b)–~~

7 (2) Dentists.

8 ~~(c)–~~

9 (3) Podiatrists.

10 ~~(d)–~~

11 (4) Veterinarians.

12 ~~(e)–~~

13 (5) Pharmacists acting within the scope of a project authorized  
14 under Article 1 (commencing with Section 128125) of Chapter 3  
15 of Part 3 of Division 107, or registered nurses acting within the  
16 scope of a project authorized under Article 1 (commencing with  
17 Section 128125) of Chapter 3 of Part 3 of Division 107, or  
18 physician assistants acting within the scope of a project authorized  
19 under Article 1 (commencing with Section 128125) of Chapter 3  
20 of Part 3 of Division 107.

21 (6) *Optometrist.*

22 (b) In any sale mentioned in this article, there shall be executed  
23 any written order that may otherwise be required by federal law  
24 relating to the production, importation, exportation, manufacture,  
25 compounding, distributing, dispensing, or control of controlled  
26 substances.

27 *SEC. 5. Section 11251 of the Health and Safety Code is*  
28 *amended to read:*

29 11251. No prescription is required in case of sales at  
30 wholesale by pharmacies, jobbers, wholesalers, and  
31 manufacturers to any of the following:

32 (a) Pharmacies as defined in the Business and Professions  
33 Code.

34 (b) Physicians.

35 (c) Dentists.

36 (d) Podiatrists.

37 (e) Veterinarians.

38 (f) Other jobbers, wholesalers or manufacturers.

39 (g) Pharmacists acting within the scope of a project authorized  
40 under Article 1 (commencing with Section 128125) of Chapter 3

1 of Part 3 of Division 107, or registered nurses acting within the  
2 scope of a project authorized under Article 1 (commencing with  
3 Section 128125) of Chapter 3 of Part 3 of Division 107, or  
4 physician assistants acting within the scope of a project authorized  
5 under Article 1 (commencing with Section 128125) of Chapter 3  
6 of Part 3 of Division 107.

7 (h) *Optometrists.*

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